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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 2nd April 1954

S.R.O. 1117.—Whereas the election of Shri Mangal Dass, as a member of the Legislative Assembly of the State of Delhi, from the Aryapura constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Jaswant Singh, son of Shri L. Gulab Singh, 25/D, Kamla Nagar, Subzi-mandi, Delhi;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent copy of its order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, DELHI

ELECTION PETITION No. 11 OF 1952

(Election Petition No. 206 of 1952 before the Election Commission)

Shri Jaswant Singh—*Petitioner*

versus

Shri Mangal Das & others—*Respondents*.

JUDGMENT

The petitioner Shri Jaswant Singh was one of the candidates for election to the Delhi State Legislative Assembly from the Arya Pura Constituency. His nomination paper, however, was rejected by the Returning Officer on the ground that the age given in the nomination paper did not correspond with the age given in the electoral roll. The election was eventually fought between the first respondent Shri Mangal Das and the third respondent Tikka Harbans Singh and the former was declared duly elected. The petitioner contends that the rejection of his nomination paper was improper and the result of the election has been materially affected by the said improper rejection. He consequently prays that the election of the first respondent be declared to be wholly void.

The first respondent contends that the petitioner is not competent to maintain the petition as he was not an elector in the constituency and was also not a duly nominated candidate. He maintains that the nomination paper had been properly rejected on the ground on which it was and further contends that the nomination paper was in any case liable to be rejected on the grounds that the petitioner had not filled in columns 7 and 8 of his nomination paper and he had also not deposited the sum of Rs. 250 along with the nomination paper.

The following issues were framed in the case:

1. Is the petitioner not competent to maintain the petition for the reason that he was not an elector in the constituency and also not a duly nominated candidate?
2. Was the nomination of the petitioner improperly rejected?
3. Was the nomination liable to be rejected on the grounds mentioned by the respondent in his written statement?
4. Was the result of the election materially affected by the improper rejection of the nomination?

Issue No. 1.—This issue was not argued before us. It is not necessary that a candidate must be registered as a voter in the constituency from which he is seeking election. The petitioner was registered as one in the *Chandrawal* constituency and this in law entitled him to stand from the Arya Pura constituency as well. The first issue is accordingly decided against the respondent.

Issue No. 2.—This issue relates to the rejection of the nomination paper on the ground of discrepancy in age as given in the nomination paper and in the electoral roll. The matter has been considered by us in Election Petition No. 10 of 1952 (*Shri Jaswant Singh versus Shri Jagan Nath & others*) which related to the rejection of the petitioner's nomination paper from the Roshanara Constituency on identical ground. We have held in that case that the nomination paper had been improperly rejected. For reasons given in our order in the above mentioned case, we think that the rejection of the nomination paper on the ground of discrepancy in age was improper. We have, however, still to consider if the nomination paper was not liable to be rejected on other grounds.

Issue No. 3.—The nomination paper Ex. R.1 before us shows that the petitioner had failed to fill up columns Nos. 7 and 8. Column 7 relates to the constituency in which the name of the candidate is included, while column 8 relates to the serial number of the candidate in the electoral roll of the constituency in which his name is included. The petitioner's contention is that he had failed to fill columns 7 and 8 in Ex. R.1 but these had been properly filled in a second nomination paper filed by him. This alleged second nomination paper is, however, not on the record. The Returning Officer, Mr. Mittal has deposed that only one nomination paper was filed by the petitioner and has also explained how in the first sentence of his order he had mentioned that two nomination papers had been filed. We were also referred in this connection to the statement Ex. R.2 which was prepared under the orders of the Returning Officer. This statement shows that the petitioner had filed only one nomination paper. It was urged that no reliance should be placed on this statement because there are several corrections therein. These, however, are explained by the fact that the clerk responsible for preparation of the statement in question had by mistake serialised as No. 4 the nomination paper which should have been serialised as No. 3. He had omitted to give No. 3 to any nomination paper with the result that the nomination papers serialised 4 to 28 had to be serialised as 3 to 27. There is nothing at all suspicious in the document in question and we have no hesitation in accepting the statement of the Returning Officer as conclusive on this point. The question, therefore, for consideration is as to whether the failure of the petitioner to fill in columns Nos. 7 and 8 of the nomination paper invalidates the same.

Pt. Nanak Chand, who appeared for the respondent, urged that the omissions are of such a grave character that the nomination paper must be held to be invalid. The nomination paper in question correctly gives the name of the petitioner, as also of his father. In column No. 5 the petitioner's address is given as plot No. 25D, house No. 6498, Kamla Nagar, Sabzimandi, Delhi. In the electoral roll for Sabzimandi the address entered is the same as in the nomination paper. It was urged on behalf of the petitioner that since his name as well as his father's name and his address had been correctly given in the nomination paper there could be no difficulty in finding out his serial number in the electoral roll of the constituency and the omissions, therefore, in the present case, were of a character which could and should be overlooked. In the repoted cases the view taken is that the provisions of the law are adequately complied with if a nomination paper contains sufficient particulars to identify the person concerned and a meticulous compliance with the rules is not necessary. The question is one to be decided on the facts of each case. A candidate may be so well known that omission to fill in all the particulars in the nomination form may not be calculated to raise in the least any doubt about his identity. On the other hand, a candidate may be a comparatively unknown person and there may also be in the same constituency others of the same name and it may be genuinely difficult in such a case to be sure of the identity of the candidate concerned. According to the evidence on the record the petitioner was at that

time connected as a member with the S.S. Jain Sabha of which he is now President. He was also connected with the local branch of the Jan Sangh. He was consequently a well known person in the locality and the circumstances suggest that there was never at any time any serious doubt in the mind of anybody about the identity of the petitioner.

The curious fact about the case before us is that on the one hand the objection regarding the petitioner's age was based on the entry against serial No. 31786 in the electoral roll, and on the other that the description of the petitioner as given in the nomination paper was not adequate to identify him with the person of the same name entered at No. 31786 in the electoral roll. In other words at the time the objection was raised with regard to the discrepancy in age, the petitioner's serial number as given in the electoral roll had already been brought to the notice of the Returning Officer and the rival candidates. It is difficult, therefore, in the circumstances to take the view that since there were genuine doubts about the identity of the petitioner his nomination paper was liable to be rejected on the grounds taken in the written statement. After all and in spite of the language used in section 36, sub-section 2(d) the description of the candidate is a means to an end and not an end in itself. The object in view is that there should be no ambiguity left in the minds of the electors as to the identity of the person who is standing as a candidate and if by reason of other description given in the nomination paper no such difficulty is likely to arise then the nomination paper cannot be rejected because the candidate had inadvertently omitted to mention certain particulars. The provisions of the law regarding the place where and the hours within which a nomination paper must be presented stand on a different footing. A Returning Officer has no jurisdiction to receive the same after the hours prescribed, nor has he jurisdiction to receive the same at a place other than that laid down by law. No question of jurisdiction is, however, involved if the Returning Officer accepts a nomination paper which is not complete in all respects.

The above aspect of the matter becomes further clear by reference to section 33(5) and section 36(4) of the Representation of the People Act, 1951. Section 33(5) lays down that on the presentation of a nomination paper the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer and seconder as entered in the nomination paper are the same as those entered in the electoral rolls and the proviso to the above sub-section authorises the Returning Officer to permit any clerical error in the nomination paper in regard to the said names or numbers to be corrected, in order to bring them into conformity with the corresponding entries in the electoral rolls. In the case before us the Returning Officer did not comply with the provisions of the above sub-section. If he had done so he would have allowed the petitioner to complete the Form in which case no difficulty would have arisen on the date of the scrutiny. Similarly section 36(4) enjoins that the Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character. The policy of the law obviously, therefore, is that the Returning Officers should struggle, so to say, to uphold a nomination paper and should not lend themselves to rejection thereof on technical grounds and we think we will be acting not only according to the spirit but also the letter of the law if we hold that the omission to fill in the name of the constituency in which the candidate is registered as a voter or to state the serial number of the petitioner's electoral roll does not invalidate the nomination paper.

In the above connection we would also like to emphasize the special circumstances of the present case. The petitioner had filed nomination papers from three constituencies, viz. Chandrawal constituency, Roshanara constituency and Arya Pura constituency. There were no blanks, it appears, so far as the nomination papers relating to the Chandrawal and Roshanara constituencies are concerned, although discrepancy in age was common to all the nomination papers relating to the three constituencies. The nomination paper with regard to the Chandrawal constituency which was taken up first went through since no objection was raised before the Returning Officer. When that relating to the Roshanara constituency was taken up it was rejected on the ground stated already, viz. that the age given in the nomination paper did not correspond with the age given in the electoral roll. The order in the case of Arya Pura constituency was passed without any further argument following the order in the case of Roshanara constituency. In consideration, therefore, of the fact that the nomination papers of the same person with respect to three different constituencies had been taken up one after the other by the same Officer, there was never any doubt in the mind either of the Returning Officer or of the rival candidates about the identity of the petitioner and the Returning Officer had rejected the nomination papers relating to Arya Pura and Roshanara constituencies only under a mistaken belief that he was bound to do so since no request had been made to him to correct the entry relating to age in the nomination paper so as

to make it correspond with the entry in the electoral roll. Having regard, therefore, to all these facts we are of the view that the omissions in the peculiar circumstances of the present case are not fatal, i.e. do not invalidate the nomination paper.

A further objection raised in the written statement is that the petitioner had not deposited the sum of Rs. 250 along with the nomination paper and for this reason also his nomination was liable to be rejected. This point was, however, not argued at the bar.

Issue No. 3 is accordingly decided against the respondent.

Issue No. 4.—The question as to whether a petitioner after establishing that his nomination paper had been improperly rejected must further establish that the result of the election had been materially affected, has been considered by us in the case of *Jaswant Singh versus Jagan Nath and others*, referred to above and we need only briefly recapitulate the arguments here. An election in which one or more qualified candidates are prevented from contesting the same by reason of the improper rejection of the nomination papers of such candidate or candidates is not an election as contemplated by law and consequently must in the words of section 100 of the R.P. Act be declared "wholly void". Some authorities no doubt lay down that improper rejection merely raises a strong presumption that the result of the election has been materially affected and that the presumption would require the strongest and most conclusive proof for its rebuttal, but we prefer to adhere to the view taken by this Tribunal in Election Petition No. 2 of 1952 *Hans Raj versus Prof. Ram Singh and others* that it is as irrelevant to raise the question of chances of success of the rival candidates before a Tribunal as it would have been before the Returning Officer. Section 90, sub-clause (3) of the Representation of the People Act lays down that the provisions of the Indian Evidence Act (1872) shall, subject to the provisions of the R.P. Act be deemed to apply in all respects to the trial of an election petition. When, therefore, an issue is raised before a Tribunal that a certain candidate would have had no chance of success even if his nomination paper had not been rejected the only material on which a Tribunal could give a finding one way or the other on an issue of this character would be the opinions of witnesses supposed to be conversant with the conditions prevailing in the constituency on or about the election date. The opinions of these witnesses about the chances of success would be based on a series of assumptions which may or may not be correct and to test the correctness of those assumptions would involve admitting of an amount of evidence which in the end would lead nowhere. The more correct view, therefore, appears to us to be that once improper rejection of a nomination paper is established it follows as a necessary consequence that the election must be declared to be wholly void and our view in this respect is in no way affected by two or three judgments recently given by certain Rajasthan Tribunals in which the presumption was held to have been rebutted by the respondents concerned. With all respect, we are of the view that the conclusion in these cases is based on the evidence which is legally inadmissible.

Assuming that the presumption is only a rebuttable one, we proceed to consider as to whether the respondent has succeeded in establishing that the result of the election had not been materially affected by reason of the improper rejection of the nomination paper. The evidence led by the respondent is to the effect that Tikka Harbans Singh was the person selected by the Jan Sangh to contest the election from this constituency, that the petitioner was a "covering" candidate only and that he, i.e. the petitioner, had never approached the voters in the constituency. R.W. 3, who was the President of the Refugee Association in 1951, has deposed that the displaced persons who formed a majority of the voters in the area were all supporting the respondent Shri Mangal Das. The petitioner has, however, denied that he was merely a covering candidate or that he never seriously intended to fight the election from this constituency. He has, however, admitted that he was a candidate from two other constituencies as well, that he had contested the election from the *Chandrawal* constituency and had lost to the Congress candidate.

We do not think we should attach any importance to the statement of R.W. 3, who had deposed about the mind of the refugees in the matter of their preference for a particular candidate. In the nature of things this gentleman could not have contacted thousands of refugees living in the locality and his opinion even if genuine must be based on impressions gathered from talks with some of the refugees only. The petitioner was at that time not in the field since his nomination paper had been rejected and the refugees had, therefore, no chance of expressing their mind to the witness about the relative merits of the petitioner and the respondent Shri Mangal Das.

Evidence of the character given by R.W. 3 is certainly not adequate to rebut the presumption arising in such circumstances in favour of the candidate wrongly excluded from contesting the election.

As regards the allegation that the petitioner never seriously intended to contest the election and that he had always intended to withdraw in favour of Tikka Harbans Singh if the nomination paper of the latter was not rejected, we note that no office bearer of the Jan Sangh has been produced in support of the above allegation. Even Tikka Harbans Singh was not produced. The petitioner, as noticed already, has denied the allegation. In these circumstances we are unable to hold that the petitioner had never intended to contest the election from this constituency nor would this fact, even if established, make any difference. The petitioner was entitled to change his mind at a later stage. He had three contiguous constituencies wherefrom he contested the election and he had the right to reserve his judgment till after the date of scrutiny. The fact that his nomination papers were rejected from two out of three constituencies left him with no alternative but to fight the election from the *Chandrawal* constituency and if he lost in that constituency it does not follow that he would have shared the same fate in the other two constituencies. Tikka Harbans Singh, the Jan Sangh candidate, had no doubt lost the election to the respondent, but that may have been due to reasons not connected with the party supporting him and it would be pure speculation to hold that since Tikka Harbans Singh had lost to the Congress candidate the petitioner would have lost as well.

For all the above reasons, we decide issue No. 4 in favour of the petitioner and accepting the petition declare the election of the respondent Shri Mangal Das to be wholly void. Having regard to all the circumstances of the case we leave the parties to bear their own costs.

Announced in open Court

(Sd.) GURDEV SINGH, *Chairman,*
Election Tribunal, Delhi.
(Sd.) DURGA PRASAD NAJR, *Member,*
Election Tribunal, Delhi.
(Sd.) PARSHOTAM LAL, *Member,*
Election Tribunal, Delhi.

The 31st March, 1954.

[No. 19/206/52-Elec.III/7613.]

By Order,
C. L. GOYAL, Asstt. Secy.

